IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 967 OF 2007

German Remedies
a Division of Cadila Health Care Ltd. ...Petitioner
V/s.
Shri R.D. Lotlikar ...Respondent

Mr.P.M. Palshikar for the Petitioner.
Mr.R.D. Bhat for the Respondent.

CORAM : V.M. KANADE, J.

DATED : JUNE 28, 2007

P.C. :-

1. By this petition, the petitioner is challenging the order passed by the Industrial Court whereby the Industrial Court was pleased to decide the preliminary issue raised by the company in favour of the workman and has recorded a finding that respondent no.1 is a workman and thereafter, set aside the order passed by the Labour Court.

2. Rule. Rule is made returnable forthwith by consent of parties. The matter is taken up for final hearing at the admission stage.

3. The complaint of unfair labour practice under Items 1(a) to 1(g) of Schedule IV of the MRTU and PULP Act, 1971 was filed by the respondent no.1 in 1995. The respondent joined the company as Junior Engineer on 1.11.93 at its Andheri Branch. On 25.10.93, an order of suspension was issued against the respondent alleging misconduct, insubordination and theft. The charge-sheet was filed and issued on 9.11.93 and inquiry was concluded on 31.1.95 . The Enquiry Officer held that the respondent was guilty of the charges which were levelled against him and thereafter, Show Cause Notice was issued to the respondent on 12.5.95 and on 15.5.95, the respondent was discharged from service. During the period of suspension, the respondent was paid subsistence allowance.

4. The Labour Court framed a preliminary issue on 5.10.95 as to whether the respondent was a workman or not. Thereafter, an additional issue was framed by the Labour Court as to whether the company was estopped from denying the status of the workman to the respondent. The Labour Court decided the preliminary issue on

29.9.2004 and held that respondent was not a workman. Being aggrieved by this order, the respondent preferred revision application before the Industrial Court. This revision application is allowed by the Industrial Court and the order of Labour Court was set aside and Industrial Court held that the respondent is a workman under the provisions of the said Act.

5. The learned Counsel appearing on behalf of the petitioner, vehemently urged that the Industrial Court had reappreciated the evidence and had exercised jurisdiction not vested by law and therefore, the said order was liable to be set aside. He submitted that the Labour Court having held that the respondent was a workman, it was not open for the Industrial Court to reappreciate the evidence and come to the different conclusion while exercising its jurisdiction under Section 44 of the said Act. He further submitted that the Industrial Court wrongly placed reliance on the judgment in the case of **S.A. Sarang (supra).** He also relied on the judgment of the Apex Court in the case of **Mukand Ltd. Vs. Mukand Staff & Officers' Association**

reported in AIR 2004 SC 3905. He submitted even the parties had given their consent to the Tribunal to decide an issue and if there was inherent lack of jurisdiction, such a reference was not tenable.

6. He invited my attention to the various correspondence between the company and respondent no.1 wherein the company in specific terms had observed that the respondent was not a workman and that the Model Standing Orders are not applicable in his case, yet the charge-sheet was being issued to him. He submitted that this fact has been overlooked by the Industrial Court while exercising its jurisdiction.

7. The learned Counsel on behalf of the respondent has pointed out that the Industrial Court had observed that the Labour Court had committed an error of law which was apparent on the face of record and therefore, had set aside the findings which were recorded by the Labour Court.

8. In the present case, the complaint was filed

with the respondent in 1995. It is alleged in the charge-sheet which was issued against respondent no.1 that he had allowed the contract labour to take away Lambi and some other material without the consent of the management and secondly, though he was asked by the Chief Engineer to report to the factory at midnight, he had not reported to work, therefore, he was guilty of insubordination. I have perused the order passed by the Labour Court as also Industrial Court. The Industrial Court has relied on the judgment of this Court in the case of **S.A. Sarang (supra)** wherein this Court had held that the employer had taken action against the employee which could be taken only as per the Model Standing Orders. It was not open for the employer to then contend that the employee was not a workman.

9. The learned Counsel for the petitioner has strenuously urged that the ratio in the case of **S.A. Sarang (supra)** will not apply to the facts of the present case since in that case, it was specifically mentioned in the charge-sheet that an action of the employee amounted to misconduct as per the Model

Standing Orders. He submitted that in the present case, however, in the charge-sheet and the other orders which were passed it is specifically stated that the Model Standing Orders are not applicable to the employee. This submission cannot be accepted. The Industrial court has only taken into consideration the fact that the action which was taken against the employee would only have been taken under the Model Standing Orders, it was also noted that the respondent was paid subsistence allowance which could be only paid under the relevant Model Standing Orders and that this conduct of the management clearly indicated that they had treated the respondent no.1 as a workman and therefore, the company was now estopped from raising the preliminary issue.

10. There is no merit, therefore, in the first submission made by the learned Counsel appearing on behalf of the petitioner.

11. From the perusal of the order passed by the Industrial Court, it will be seen that the Industrial Court has taken into consideration the various judgments

of this Court and the Supreme Court while coming to the conclusion that the respondent no.1 is a workman. The Apex Court has in a catena of cases held that what is important is not the designation of the employee and that could not be a decisive factor in arriving at a decision whether he is a workman or not. The Apex court has further observed that what has to be seen is the predominant duty which is performed by the complainant alongwith other factors. The Industrial Court further having noted the judgment of the Apex Court on this aspect and in the light of the said ratio of the said judgment which is referred to in his order, has come to the conclusion that the respondent no.1 is a workman. It, therefore, cannot be said that the Industrial Court has reappreciated the evidence while setting aside the order passed by the Labour Court. There is no merit in the second submission made by the learned Counsel for the petitioner.

12. Another fact which is to be noted here that the complaint was filed in 1995, more than 12 years have

passed and yet the preliminary issue is still being challenged by the company. The preliminary issue was framed by the Labour Court on 5.10.95. Against the said order, the company preferred an application under Section 44. In 1998, revision application was dismissed and the matter was remanded back to the Labour Court. Thereafter, a preliminary issue was decided on 29.4.2004. Thus more than 12 years have passed only on the question of deciding the preliminary issue.

13. Under the circumstances, I do not see any reason to interfere with the order passed by the Industrial Court while exercising writ jurisdiction under Article 226 of the Constitution of India.

. Writ Petition is, accordingly, dismissed. Rule is discharged.

(V.M. KANADE, J.)